

107-107-1995

HERD PRODUCTION PROGRAM AGREEMENT

THIS HERD PRODUCTION PROGRAM AGREEMENT ("Agreement"), executed this 1st day of February 1995 by and between [REDACTED] of [REDACTED] La, ("Operator") and PORK TECHNOLOGIES, INC., an Iowa corporation with its principal place of business in Ames, Iowa ("Pork Tech").

WHEREAS, Pork Tech is in the business of rendering consulting and related services for swine operations; and

WHEREAS, Operator is a swine operator and owns certain farrow-to-finish facilities, described in Exhibit "A" attached hereto (the "Facility"); and

WHEREAS, Pork Tech has negotiated a Hog Purchase Contract signed November 2, 1994 with Monfort, Inc., a Delaware corporation ("Monfort"), requiring Pork Tech to provide a dependable supply of quality premium hogs to Monfort's Marshalltown, Iowa hog processing plant (the "Monfort Contract"); and

WHEREAS, the Monfort Contract allows Pork Tech to receive a premium price in exchange for the dependable supply of hogs, so long as the market price for slaughter hogs remains below \$42/cwt.; and

WHEREAS, the Monfort Contract requires Pork Tech to continue to supply market hogs as a discounted price if the market price of slaughter hogs exceeds \$48/cwt.; and

WHEREAS, Operator desires to obtain the benefits available under the Monfort Contract by contracting with Pork Tech for consulting and related services, including but not limited to the marketing of Operator's hogs; and

WHEREAS, Operator is willing to assume the obligation to burdens associated with marketing Operator's hogs under the Monfort Contract; and

WHEREAS, Pork Tech agrees to provide consulting and related services to Operator, including but not limited to Operator's right to market hogs under the Monfort Contract, pursuant to the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. TERM AND PAYMENT. This Agreement shall continue and remain in effect through August 1, 2001, provided however that if the Monfort Contract between Pork Tech and Monfort is terminated, Pork Tech shall have the right to terminate this Agreement upon thirty (30) days written notice.

Payment from Pork Tech to operator shall be in accordance with the provisions of Exhibit D attached hereto and which Exhibit is made part of this Contract. Payment shall be made promptly, without undue delay, following operator's delivery of hogs as required in accordance with generally accepted payment standards in the industry.

SECTION 2. MANAGEMENT FEE. In consideration for the consulting and related services provided by Pork Tech, Operator agrees to pay Pork Tech a management fee based on the total hogs marketed under this Agreement. Operator agrees that Monfort shall be directed to draft payment to the order of Pork Tech. The management fee shall be paid at a rate of \$___ per pig marketed.

SECTION 3. MARKET PIGS. For purposes of this Agreement, "Market Pigs" shall be those pigs raised in the Facility by Operator which meet the specifications required in the Monfort Contract, as set forth in Exhibit "C" attached hereto. Operator projects orderly shipment of the following "Market Pigs" per quarter:

	1st quarter	2nd quarter	3rd quarter	4th quarter
1995	500	585	585	670
1996	715	715	715	715
1997	780	780	780	780
1998				
1999				
2000				
2001				

SECTION 4. OBLIGATIONS OF PORK TECH. During the terms of this Agreement, Pork Tech shall provide the following services to Operator:

- A. Provide marketing sources for Market Pigs.
- B. Four on-farm service calls by Pork Tech specialist per year.
- C. Provide written dialogue to Operator following service calls.
- D. Monitor Operator's production records.

- E. Formulate an action plan for Operator's operation.
- F. Provide recommendations for a genetic and nutritional improvement program that enhances herd productivity.

SECTION 5. OBLIGATIONS OF OPERATOR. During the term of this Agreement, the Operator shall institute all reasonable recommendations and/or standards:

- A. Maintain Operator's facilities in accordance with acceptable production standards and all reasonable standards set by Pork Tech in agreement with Operator.
- B. Institute all genetic and production improvement recommendations made by Pork Tech in agreement with operator for the intended purpose of producing superior Market Pigs.
- C. Maintain a quality record keeping system acceptable to Pork Tech in agreement with Operator.
- D. Market all Market Pigs through Pork Tech pursuant to the Monfort Contract.

SECTION 6. REPRESENTATIONS OF PORK TECH. Pork Tech represents and warrants that, in the rendering of consulting and related services under this Agreement, it will follow the customary practice that would be expected to be exercised under the same or similar conditions.

SECTION 7. TITLE. Title to all hogs governed by this Agreement shall at all times remain with Operator. Operator shall, upon notice from Pork Tech, provide clear title to all hogs to be sold on Operator's behalf by Pork Tech pursuant to the terms of the Monfort Contract. Title to Operator's hogs will be cleared within a reasonable period following receipt of notice from Pork Tech. Operator shall indemnify and hold Pork Tech harmless from any claims, demands, damages, or judgments related to the failure of Operator to provide clear title to Operator's hogs as required in this Section 7. Pork Tech shall agree to add additional name/s to check draft as may be required by Operator's lender(s), without additional charge or fee.

SECTION 8. DISPOSAL OF MANURE AND CARCASSES. Pork Tech shall have no responsibility or control over the disposal of manure and carcasses from the facility. Operator shall remove and dispose of all manure and dead hogs from the Facility and legally dispose of the same. Operator agrees to indemnify and hold harmless Pork Tech, its employees and clients, from any and all claims, demands, penalties, fines, assessments, costs or judgments (collectively referred to as "Claims") arising out of or related to the storage, removal and disposal of manure or dead animals from the Facilities, including but not limited to Claims of nuisance filed by neighboring landowners, whether such Claims should arise from past, present or future actions or inactions of Operator or employees of Operator.

SECTION 9. DISCLAIMER. Operator, by signing this Agreement, recognizes that there may result loss or damage to animals, loss to profits, impairment of herd health, profitability or productivity of swine herd as the result of conditions or circumstances beyond the control of Pork Tech or Operator. Pork Tech makes no guarantee or warranty, express or implied, as to the profitability, productivity, herd health, or results or any services provided under this Agreement.

SECTION 10. NOTICES. All written notices, requests, demands and other communications required by this Agreement shall be deemed to have been duly given if delivered or mailed, first class, postage prepaid, to Pork Tech at: PORK TECHNOLOGIES, INC., P.O. Box 1770, Ames, IA, 50010 and to Operator at: _____

SECTION 11. MATERIAL BREACH OF AGREEMENT. At any time Pork Tech determines that there has been a material breach of this contract by Operator, Operator will be given 30 days to correct breach. Pork Tech may immediately terminate this agreement without penalty or charge to it if Market Hogs produced by Operator are not meeting hog specifications (exhibit C) .

SECTION 12. AGENCY. Operator agrees that Operator is not agent or employee of Pork Tech nor Pork Tech's clients and waives all claims for recovery from Pork Tech or Pork Tech clients for any loss or damage to any of Operator's property or premises, including but not limited to the Facility, that might be damaged during the term of this Agreement.

SECTION 13. ENTITY CONFIRMATION. In the event that Operator is a legal entity other than a natural person, Operator agrees to provide such reasonable documentation as may be required by Pork Tech to confirm the existence of said entity, initially and periodically during the term of this Agreement and to confirm the name(s) of the party(ies) to act lawfully on behalf of said entity.

SECTION 14. REMEDIES. Operator agrees and acknowledges that Pork Tech is relying upon this Agreement to fulfill Pork Tech's obligations to supply market hogs to Monfort under the Monfort Contract. Accordingly, it is agreed that, in the event that Operator shall terminate this Agreement for any reason other than statements included in this contract, Pork Tech shall be entitled to recover from Operator all costs, fees and expenses, including but not limited to legal fees, incurred in pursuing all legal and equitable remedies available to Pork Tech. Such remedies shall include but not be limited to an action for actual damages incurred by Pork Tech as a result of Operator's termination of this agreement measured by multiplying the difference between the actual market price and the price under the Monfort Contract less all expenses associated with fulfilling the Pork Tech's obligation to supply market hogs to Monfort under the Monfort Contract, by the number of Operator's hogs that would have been marketed under this Agreement had Operator not terminated the Agreement. Such damages shall be calculated and charged to Operator for each group of Operator's hogs that would have been marketed under this Agreement from the date of termination until the date of expiration of this Agreement.

SECTION 15. LIMITATION OF LIABILITY. Pork Tech shall not be liable for any losses outside of its control or beyond the scope of the express responsibilities imposed by the terms of this Agreement. Operator agrees that no agent or employee of Pork Tech is an agent or employee of Operator nor shall Pork Tech save and hold harmless Operator from any damages or expenses that Operator may incur as a result of Pork Tech's services under this Agreement.

SECTION 16. AMENDMENTS. This Agreement sets forth the entire understanding of the parties and it may be amended or modified by, and only by, a written instrument executed by the parties hereto.

SECTION 17. SEVERABILITY. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

SECTION 18. WAIVER. The failure of any party hereto to insist in any one or more instances upon performance of any term or condition of this Agreement shall not be construed as a waiver of future performance of any such term, covenant or condition, but the obligation of such party with respect thereto shall continue in full force and effect.

SECTION 19. BINDING EFFECT. This Agreement shall be binding upon the parties, their heirs, executors, administrators and assigns. Except as otherwise provided herein, this Agreement cannot be assigned, transferred, or sold by either party, nor may either party subcontract their performance, duties and obligations under this contract to any other person, firm corporation or entity without the express prior written consent of the other party.

SECTION 20. FORCE MAJEURE. Pork Tech and Operator shall, either wholly or partially, be relieved of its obligations hereunder during any period of time when performance becomes commercially impossible because of reasons beyond its control involving fire, explosion, strike, war, riot, final governmental regulations or intervention, and acts of God (each a "Force Majeure Event"). Operator shall be further relieved of its obligations in case of death of operator and heirs opt to liquidate swine operation, additional reasons permitting Operator to be relieved of obligations under this agreement shall be agreed upon between the parties.

SECTION 21. CAPTIONS. The captions herein are inserted for convenience of reference only and shall be ignored in the construction or interpretation hereof.

SECTION 22. GOVERNING LAW. The parties agree that this Agreement is made in the State of Iowa and that the law of Iowa shall govern any action or dispute arising under this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date and year first above written.

Operator

(Please Type or Print Name
and Title, if applicable)

S.S. or Fed. ID #

Pork Technologies, Inc.

By

Its

(Please Type or Print
Name and Title)

Exhibit "A"

1. Operator's farrowing facility is located on land which is legally described as follows:

[REDACTED]

The nearest town or city is: [REDACTED]

The directions to the Operator's farrowing facility from the above town or city are:

[REDACTED]

2. Operator's finishing facility is located on land which is legally described as follows:

The nearest town or city is:

Same

The directions to the Operator's finishing facility from the above town or city are:

Exhibit "C"

A summary of the minimum specifications for Market Pigs delivered under the Monfort Contract have been attached hereto.

Hog Specifications

- **Market Hogs.** For purposes of this Agreement, the term "Market Hog" shall mean hogs meeting the specifications set forth on Exhibit C.
- Hogs shall be live and must pass USDA ante mortem inspections and be disease free.
- Hogs must be within USDA limits on all residues (i.e. sulfa) and be certified Level III Pork Quality Assurance.
- **Weight.** ConAgra shall not be required to accept any Hog weighing less than 210 pounds or more than 310 pounds. Operator shall use its best efforts to achieve an average weight of 260 pounds per Market Hog. Each load shall average 240 to 270 pounds per Market Hog, except for close-out loads on finishing buildings (which shall average 210 to 310 pounds per Market Hog).
- **PSE.** Each load of Market Hogs shall have a PSE incidence of no greater than the greater of (a) plant average or (b) industry average as determined by the University of Wisconsin Research Department.
- **Grade.** All Market Hogs shall on average (measured by Fat-O-Meater over a semi-annual period) be no less than 50% lean in respect to barrows and no less than 52% lean in respect to gilts. This standard is based on the presently existing industry standard lean percentage of 48% and the parties shall annually review and revise such percentages to reflect, on a mutually acceptable basis, Buyer's requirements for leaner Hogs relative to then-current industry standards for barrows and gilts as reported by the National Pork Council or the American Meat Institute.
- **Yield.** Hot dressing yield shall average over 73.5% per load.

Exhibit "D"

PRICESection 6.01

The price for the Market Hogs supplied under this Contract shall be the sum of the "Base Price" (as defined below), plus one dollar (\$1.00) per live hundred weight, and plus or minus (as the case may be) the "Carcass Merit Adjustment" (as defined below). The Base Price shall mean "Market Price" plus or minus any adjustment required pursuant to Section 6.02 below. "Market Price" shall mean the price as calculated as follows:

- (a) The price shall be based on an average weekly price for the week immediately preceding the date upon which Seller delivers hogs to Buyer.
- (b) Average weekly prices will be determined by aggregating the sum of the highest of the range of prices quoted by the U.S.D.A. Market News Service at 10:30 a.m. report for all trading days reported within a week and dividing the sum by the number of trading days within the week.
- (c) In calculating the average weekly prices, the highest and lowest quote for the week shall not be used.

Section 6.02

If the Market Price is within a minimum and maximum range of \$42 to \$48 per cwt. Base Price shall equal Market Price. However, if the Market Price plus an amount equal to one-half (1/2) the difference between Market Price and \$42 per cwt., e.g., if the Market Price is \$38 per cwt., Base Price would be \$40 per cwt. ($\$38 + 1/2(\$42 - \$38)$). Correspondingly, if the Market Price is above \$48 per cwt., then the Base Price shall be equal to Market Price less an amount equal to one-half (1/2) the difference between the Base Price and \$48 per cwt., e.g., if the Market Price is \$52 per cwt., Base Price would be \$50 per cwt. ($\$52 - 1/2(\$52 - \$48)$).

EXHIBIT EADDENDUM TO HERD PRODUCTION PROGRAM AGREEMENT DATED
, 19 , BY AND BETWEEN
PORK TECHNOLOGIES, INC. AND

1. Operator acknowledges and understands that Monfort may deduct \$1/cwt from individual delivery loads that do not grade 50% lean.
2. In addition to provisions set forth at Section 19, Operator shall be relieved of obligations of this agreement, without penalty, if Operator suffers a disability or health problem which in the sole opinion of Operator precludes his or her continuation of Operator's swine operation. Additionally, Operator may be relieved of obligations required under the referenced agreement if there occurs a catastrophic decline in the health of Operator's swine herd.

For purposes of this paragraph, references to "Operator" shall be deemed to mean the principal participant of Operator if Operator is other than a person.

3. Operator may be relieved of the obligations of the referenced Agreement, without penalty, if Operator elects to terminate Operator's swine herd operation, regardless of the reason for such termination, and Operator does not conduct a continued or new swine herd operation during the term of this Contract. If Operator, after termination, continues or conducts a swine herd operation during the term of this Contract, the provisions regarding damages and remedies set forth in Section 14 of the referenced Agreement shall be reinstated.